

STATE OF OHIO                     )  
  )ss:  
COUNTY OF MEDINA            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No.     08CA0047-M

Appellee

v.

RAYMOND MUNDY

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF MEDINA, OHIO  
CASE No.     04CR0551

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 7, 2009

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WHITMORE, Judge.

{¶1} Defendant-Appellant, Raymont Mundy, appeals from his convictions in the Medina County Court of Common Pleas. This Court vacates his sentence.

I

{¶2} On October 27, 2004, Mundy was indicted on two counts of felonious assault on a peace officer in violation of R.C. 2903.11(A)(2)(D), felonies of the first degree; three counts of felonious assault in violation of R.C. 2903.11(A)(2), felonies of the second degree; and one count of trafficking in drugs in violation of R.C. 2925.03(A)(1)(C)(4)(c), a felony of the third degree. Following a jury trial, Mundy was found guilty of one count of felonious assault on a peace officer, three counts of felonious assault, and one count of trafficking in drugs. The jury acquitted Mundy of one count of felonious assault on a peace officer. Mundy was sentenced to 13 years in prison. Mundy timely appealed from the trial court's judgment and we affirmed his convictions. *State v. Mundy*, 9th Dist. No. 05CA0025-M, 2005-Ohio-6608. Mundy later

appealed from the trial court's denial of his motion for reconsideration and motion for resentencing, which we also affirmed. *State v. Mundy*, 9th Dist. No. 08CA0047-M, 2009-Ohio-1136. In March 2009, Mundy filed a motion to reopen his appeal pursuant to App.R. 26(B), which this Court granted. Mundy now asserts three assignments of error for our review. We have rearranged Mundy's assignments of error to facilitate our review of this matter.

## II

### Assignment of Error Number Three

“MUNDY’S SENTENCE IS VOID.”

{¶3} In his third assignment of error, Mundy argues that his sentence is void because the trial court failed to comply with certain statutory mandates, one of which was the imposition of post-release control.

{¶4} R.C. 2967.28(B)(1) requires, in relevant part, that:

“(B) Each sentence to a prison term for a felony of the first degree, \*\*\* shall include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender’s release from imprisonment. \*\*\* [The] period of post-release control \*\*\* shall be[,] \*\*\* [f]or a felony of the first degree[,] \*\*\* five years[.]”

Mundy was convicted of and sentenced for assault on a peace officer, which is a first-degree felony. Therefore, under the terms of R.C. 2967.28(B)(1), the trial court was required to impose a mandatory term of five years of post-release control at the time of Mundy’s sentencing. The record reveals that the trial court properly advised Mundy at his sentencing hearing that “when [he was] released from prison, [he would] be on a five year period of post-release control.” When journalizing Mundy’s sentence, however, the trial court indicated that that his post-release control would be “for a term of *up to* five (5) years.” (Emphasis added.) Although the trial court correctly stated at Mundy’s sentencing hearing that post-release control was mandatory for a

definite period of five years, Mundy’s sentencing entry reflects the imposition of mandatory post-release control for an indefinite term, suggesting it could last for less than five years. Accordingly, Mundy’s sentence does not conform to the statutory terms of R.C. 2967.28(B)(1). *State v. Robertson*, 9th Dist. No. 07CA0120-M, 2009-Ohio-5052, at ¶5-7; *State v. Steidl*, 9th Dist. No. 09CA0010-M, 2009-Ohio-5053, at ¶4-8.

{¶5} “When sentencing a felony offender to a term of imprisonment, a trial court is required to notify the offender at the sentencing hearing about post[-]release control and is further required to incorporate that notice into its journal entry imposing sentence.” *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, paragraph one of the syllabus. “[A] sentence that does not conform to statutory mandates requiring the imposition of post[-]release control is a nullity and void, [and] it must be vacated.” *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at ¶22. Moreover, “where a sentence is void because it does not contain [an accurate post-release control notification,] the proper remedy is \*\*\* to resentence the defendant.” *Jordan* at ¶23. Here, the trial court failed to properly impose post-release control for a definite term of five years as required by statute when it journalized Mundy’s sentence. Accordingly, Mundy’s sentence is void and must be vacated. *Simpkins* at ¶22.

{¶6} When a “journal entry is void because it included a mistake regarding post-release control \*\*\* there is no final, appealable order.” *State v. Bedford*, 9th Dist. No 24431, 2009-Ohio-3972, at ¶11. Accordingly, this Court does not have jurisdiction to consider the merits of Mundy’s appeal. *Id.* at ¶14.

#### Assignment of Error Number One

“MUNDY’S PRIOR APPELLATE COUNSEL WAS DEFICIENT AND INEFFECTIVE, MUNDY WAS PREJUDICED BY THE DEFICIENCY AND INEFFECTIVENESS, AND AS SUCH THIS COURT SHOULD VACATE ITS

PRIOR JUDGMENT AND ENTER AN APPROPRIATE JUDGMENT ON THE MERITS.”

Assignment of Error Number Two

“MUNDY WAS ENTITLED TO A HEARING ON HIS MOTION FOR RE-SENTENCING AND/OR MOTION FOR RECONSIDERATION OF JUDGMENT DENYING THE MOTION.”

{¶7} Because Mundy’s sentence is void and must be vacated, we lack jurisdiction to consider his two remaining assignment of error. Id.

III

{¶8} Because Mundy’s sentence is void and must be vacated, we cannot address the merits of his appeal. The judgment of the Medina County Court of Common Pleas is vacated and this cause is remanded for resentencing.

Judgment vacated,  
and cause remanded.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

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BETH WHITMORE  
FOR THE COURT

MOORE, P. J.  
CONCURS

CARR, J.  
DISSENTS, SAYING:

{¶9} I respectfully dissent. This case highlights the practical drawbacks with the current legal framework surrounding the imposition of post-release control. Mundy was convicted in 2005 and appealed his case to this Court on two separate occasions prior to initiating the instant appeal. By the time this case is resolved, the amount of judicial and financial resources expended will be extraordinary. Moreover, it evidences that the goal of ensuring finality in sentencing is becoming increasingly more difficult to achieve.

APPEARANCES:

MICHAEL J. CALLOW, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MICHAEL P. MCNAMARA, Assistant Prosecuting Attorney, for Appellee.